



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, DC 20350-1000

IN REPLY REFER TO

SECNAVINST 12772.1

ASN(M&RA)/DASN(CP/EEO)
6 September 2000

SECNAV INSTRUCTION 12772.1

From: Secretary of the Navy

Subj: APPEALS TO THE MERIT SYSTEMS PROTECTION BOARD

Ref: (a) Title 5, Code of Federal Regulations, Part 1201,
"Practices and Procedures"
(b) SECNAVINST 4200.31C, "Acquiring and Managing
Consulting Services", of 22 Jun 93 (NOTAL)

Encl: (1) Definitions

1. Purpose. To assign responsibilities for representation before the Merit Systems Protection Board (MSPB).

2. Cancellation. OCPMINST 12772.1

3. Policy. It is Department of the Navy (DON) policy to ensure the appropriate level of representation in appeals before the MSPB involving Government or Department-wide policy, and those involving precedent-setting or sensitive issues.

4. Coverage

a. The following employees may file appeals with the MSPB:

(1) Members of the Senior Executive Service.

(2) Individuals in the competitive service who are not serving a probationary or trial period under an initial appointment, or who have completed one year of current continuous employment under other than a temporary appointment limited to one year or less.

(3) Preference eligible individuals in the excepted service who have completed one year of current continuous service in the same or similar position.

SECNAVINST 12772.1
6 September 2000

(4) Individuals in the excepted service (other than preference eligible individuals) who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service, or who have completed two years of current continuous employment in the same or similar position under other than a temporary appointment limited to two years or less.

(5) Individuals terminated from the competitive service while serving a probationary period or while serving a trial period under a Veterans Readjustment Appointment in the excepted service, who allege discrimination because of partisan political reasons or marital status or who allege that the termination was taken for pre-appointment conditions and was procedurally improper as provided by Title 5, Code of Federal Regulations (CFR) 1201.3(a)(8), of reference (a).

b. The following applicants for employment may appeal to MSPB:

(1) Under 38 U.S.C. 4311, the Uniformed Services Employment and Reemployment Rights Act, an applicant for employment may appeal a claim of nonselection due to discrimination based on military service to the MSPB.

(2) Under 5 U.S.C. 3304, the Veterans Employment Opportunities Act of 1998, a preference eligible applicant who believes an agency has violated his or her rights under any law or regulation related to veterans' preference may file a complaint with the Department of Labor (DOL). If DOL is unable to resolve the complaint, the complainant may appeal to MSPB.

5. Appealable actions. Actions appealable to the MSPB are covered in 5 CFR 1201.2 and 1201.3 of reference (a).

6. Definitions. Enclosure (1) provides definitions of terms.

7. Responsibilities

a. Deputy Assistant Secretary of the Navy (Civilian Personnel/Equal Employment Opportunity (DASN(CP/EEO)). The DASN(CP/EEO) shall identify MSPB Initial Decisions that involve precedent-setting, DON-wide policy, or contain other sensitive issues. Where the outcome could have a significant impact on DON policy and/or personnel program operation, the DASN(CP/EEO) shall exercise exclusive representational authority and serve as the representative for DON before the MSPB, such as filing Petitions for Review (PFR), and Responses to Petitions for Review (RPFR).

Human Resources Service Centers (HRSCs), the Commandant of the Marine Corps (CMC)(MPO) and the heads of Navy activities shall be notified when exclusive representational authority is exercised. In addition, the DASN(CP/EEO) shall:

(1) Serve as liaison with the Office of Personnel Management regarding requests for intervention in cases before the MSPB.

(2) Serve as liaison with the Office of General Counsel (OGC) regarding actions seeking judicial review of any final decision of the MSPB.

(3) Evaluate initial and full MSPB decisions to identify trends.

(4) Provide appropriate program guidance.

b. Human Resources Service Centers (HRSCs).

(1) Shall prepare and submit all PFRs and RPFRs except those petitions which involve precedent-setting, DON-wide policy, or other sensitive issues.

(2) Shall identify those cases which may involve precedent-setting, DON-wide policy, or other sensitive issues and notify DASN(CP/EEO). A determination whether a case involves precedent-setting, DON-wide policy, or other sensitive issues will be made by the DASN(CP/EEO).

(3) Shall provide advice and guidance to activities and management representatives.

SECNAVINST 12772.1
6 September 2000

(4) Shall identify the need for training for management representatives and assure appropriate training is provided.

(5) Shall send a copy of each MSPB decision, on the date of receipt, to DASN(CP/EEO).

c. Commandant of the Marine Corps (CMC).

(1) Shall send a copy of each MSPB Initial Decision, on the date of receipt, to DASN(CP/EEO) and the appropriate HRSC.

(2) Shall identify those cases which may involve precedent-setting, DON-wide policy, or other sensitive issues and notify DASN(CP/EEO) by telephone within 1 day of gaining knowledge of such a case.

(3) May, for Marine Corps commands/activities, prepare and submit PFRs and RPFRs except those petitions which involve precedent-setting, DON-wide policy issues, or other sensitive issues.

d. Activity Heads

(1) Shall appoint a representative for their activity before MSPB Administrative Judges (AJ) on appeals. This is considered an inherent management function as delineated in reference (b) and may not be contracted.

(2) May seek assistance and advice from their appropriate Human Resources Office (HRO), HRSC or CMC (MPO-37), their OGC legal staffs and Judge Advocate General Corps.

(3) Must send a copy of each Initial Decision, on the date of receipt, to DASN(CP/EEO) and their servicing HRSC (Code 40). Marine Corps activity heads must also send a copy of each Initial Decision to CMC (MPO-37).

e. Human Resources Offices

(1) Provide procedural information to employees regarding their appeal rights.

(2) Provide advice and assistance to activity heads and management representatives, as requested.

(3) Maintain a case file for each appellant for a period of 4 years after final adjudication.

8. Action. Addressees will follow this instruction for appeals before the MSPB.

Richard Danzig

Distribution:

SNDL A	(Navy Department)
B3	(College and University)
21A	(Fleet Commanders in Chief)
23	(Force Commanders)
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26F	(Operations Test and Evaluation Force)
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26U	(Regional Maintenance Center)
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41B	(Area Commander, MSC)
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SECNAVINST 12772.1

6 September 2000

42D	(Fleet Aviation Specialized Operational Training Group and Detachment)
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42P2	(PATWING 1, 2, 10, PATWINGSPAC, (Kadena, Misawa, only)
45	(Fleet Marine Force - Ground)
46	(Fleet Marine Force - Aviation)
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SNDL B5	(U.S. Coast Guard (COMDT COGARD, only)
B7	(Civilian Personnel Support Activities)
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DEFINITIONS

1. Activity. A field installation, headquarters command, or office.
2. Final Decision. A decision rendered by the MSPB or an initial decision, which has become final as a result of not being contested or as a result of the PFR being denied.
3. Initial Decision. A decision made by the presiding official in response to a petition for appeal. (Initial decisions become final after 35 days unless a PFR is filed with the Board.)
4. Management Representative. Any individual authorized to represent the activity during the hearing before the Administrative Judge or who prepares a PFR or RPFR.
5. Merit Systems Protection Board (MSPB). An independent agency established to safeguard both the merit system and individual employees against abuses and unfair personnel actions. The Board hears and decides employee appeals and orders corrective and disciplinary actions against an employee or agency when appropriate. The MSPB is composed of 10 Regional and Field Offices which render initial decisions, and a 3 member Board in Washington, DC, which may accept petitions of initial decisions for review and decision.
6. Petition for Appeal. A request filed by an appellant with an MSPB regional or field office for review of a DON action.
7. Petition for Review (PFR). A request filed with the three member Board for review of an initial decision of an Administrative Judge.
8. Policy Issue. An issue which, if made the subject of a definitive ruling by the Board, may have a substantial impact on any policy established by DON, or higher authority, or establishes a new policy within DON.
9. Precedent-setting Issue. An issue which has general applicability of a significant nature and which, if made the subject of definitive ruling by the Board, will establish a

SECNAVINST 12772.1

rule, which will govern the disposition of subsequent cases dealing with the same or similar issue.

10. Administrative Judge (AJ). Any person authorized by the Board to preside over any hearing or to make a decision on the record, including an attorney-examiner, an administrative judge, an administrative law judge, the Board, or any of the members of the Board.

11. Response to a Petition for Review (RPFR). A written document, which responds to the arguments, raised by the opposing party in its PFR.

12. Sensitive Issue. Refers to any issue, which, if made the subject of a definitive ruling by the Board, may have an adverse impact on the interests of the DON.